

# **SMALL CLAIM LAW SUIT**

## **INFORMATION**

The Court request that you understand that it is improper for the judge or any of the Court's staff to give any person advice that could be deemed legal advice or steer a person to a legal conclusion.

As a matter of law [*ex-parte communication*] - the judge is unable to speak to any person filing a lawsuit [or answering a lawsuit] unless both parties are present.

The Small Claim Court is this State's true, "People's Court". The Government Code allows a Small Claims Court to relax some rules normally associated with courtroom procedures. Some of those rules may include; narrative testimony, cross examinations, objections, some of the proper etiquette associated with the presentation of evidence, and others. The Court is also permitted to ask questions. The Court will also assist the parties with procedural issues.

During your trial, you should not assume anything. When you present evidence in your case you should realize that the Judge does not pre-read your lawsuit, therefore start presenting evidence with the realization that the Court has no knowledge of the case facts. If you filed this cause of action – you have the entire burden of proof. The court does not make decisions based upon believability – the Court is not a polygraph. The Court's decision will be made entirely on the evidence that is admitted during the trial.

These instructions are written in attempt to answer some of the most commonly asked questions. They do not answer all questions. You may find more information by reading chapter 28 of the Texas Government Code, the Justice Court Rules in the Texas Rules of Court and in the Texas Civil Practice and Remedies Code or by consulting an attorney.

### **HOW MUCH CAN I SUE FOR – JURISDICTION**

The amount of money which may be sued for in a Small Claims Court is limited to damages that do not exceed \$10,000.00 [money only – you cannot ask for property in a small claim court].

### **WHAT COURT SHOULD I FILE MY LAW SUIT IN - VENUE**

In a small claims suit, the defendant shall be sued in the county and precinct in which he resides; however, there are exceptions to this rule [Government Code 28.011].

### **HOW MUCH DOES IT COST – COURT COST:**

The cost for filing a small claim suit in Collin County is \$27.00. The person you are suing has to be notified of the lawsuit; therefore you will pay an additional cost for that notification. It is called the “Service Fee”. That cost is \$55.00 [if the defendant is being served in Collin County]. Service fees vary from county to county.

### **WHO DO I SUE – DEFENDANT/RESPONDANT**

It is the responsibility of the Plaintiff [person filing the suit] that you file the lawsuit naming the defendant [person being sued] in their proper legal capacity. There are typically three:

*PERSONALLY* - Where an individual is responsible to you for damage he/she may have caused you as an individual.

*PROPRIETOR OR PARTNERSHIP* - A business that is not incorporated but does not have [on file with the County Clerk] an assumed name.

*CORPORATION* - The business which has allegedly caused you damage is incorporated and therefore it is necessary to know the individual’s name that is able to accept service on behalf of the corporation.

### **FILLING OUT THE PETITION – STATEMENT OF CLAIM**

Describe why you are filing the lawsuit. It should be written so the reader knows [from your brief narrative] what happened. This is where the defendant will get the information about the lawsuit also. If you do not clearly state your cause of action, the defendant will not be able to respond thus causing un-needed delays.

### **THE DEFENDANT GETS SERVED – SERVICE**

Your petition will be attached to the citation and then given to the defendant. The citation will order the defendant to answer to the lawsuit on the Monday following 10 days from receipt of the citation. If the defendant answers the lawsuit, the Court will notify all parties of a court date by mail. If the defendant does not answer, the Court may render a default judgment [plaintiff wins the suit because the defendant did not answer] and both parties will be notified by mail of that ruling.

### **WHAT IF I HAVE WITNESSES – SUBPOENA’S**

If you have a witness to your suit who will not come to court voluntarily, you may ask the court for a subpoena. The cost for a subpoena is \$60.00. Notarized statements from individuals may not be admissible as evidence.

### **DO I NEED AN ATTORNEY**

The court finds that most people choose to represent themselves in a Small Claim Suits. You may however choose to hire an attorney. The defendant has the same right.

### **IF I WIN THE LAW SUIT HOW DO I GET MY MONEY - POST JUDGEMENT REMEDY'S**

This court does not collect the judgment for you. The defendant pays the judgment directly to you within 10 days after judgment.

### **WHAT HAPPENES IF I DO NOT GET PAID**

If the defendant does not pay in the time allotted by law, you may have options to collect the judgment. Some of the most common options include an, "Abstract of Judgment" or a, "Writ of Execution".

*AN ABSTRACT OF JUDGMENT* can be obtained 10 days after the date of judgment and puts a lien on certain real estate owned by the Defendant. The document produced by the Court. The fee for the document is \$5.00. Once received, the Abstract must be filed with the County Clerk's office (in the county of your choice).

*WRIT OF EXECUTION* may be obtained 30 days after the date of judgment. This document authorizes the constable to seize non-exempt property from the defendant. That property can be sold for moneys to satisfy the judgment. The cost for the Writ of Execution is \$155.00 [if served in Collin County]. This fee varies from county to county.

Once again this instruction page was produced as a courtesy to you. We attempted to answer most of the frequently asked questions relating to a Small Claim Suits.

Remember, the responsibility you have when filing a lawsuit on someone never shifts to the court. You have the burden to sue the proper person – provide the proper address – pay the proper fees and submit the proper evidence.

At no time is it proper for the Court to give you advise – if after reading this form, you still have questions, CALL AN ATTORNEY – DO NOT CALL THE COURT.